IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 875 OF 1987

Navrang Dyeing Private Ltd.
and another. ... Petitioners.

V/s.

Union of India and others. ... Respondents.

Vikram Nankani i/b. Gagrat & Co.
for the petitioners.

Mrs.Neeta V. Masurkar with V.S.Masurkar
i/b. K.C.Sidhwa for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 25th August, 2005.

JUDGMENT : (Per V.C.Daga, J.)

. Heard.

2. The petitioner No.1 is a private limited registered under the Companies Act, 1956 having registered officer at Bombay. Petitioners by this petition are seeking to challenge the orders dated 2nd January, 1986; 3rd June, 1986 and 23rd July, 1986 incorporated at Exh.G; Exh.I and Exh.J respectively. The petitioners are also challenging the consequential order imposing penalty and, consequently, claiming refund of penalty in the sum of Rs.2,50,000/- paid by them.

The Facts :
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3. The factual matrix giving rise to the present petition is set out in the petition in detail. However, for the purpose of deciding this petition suffice it to say that the petitioners were the agents operating under the letter of authority dated 11th November, 1982 given by M/s.Royal Fabrics, Bangalore, who were holding advance import licence bearing No.0336959; dated 18th August, 1982 authorising them to import 4,233 kgs. of Mulberry Raw Silk of any grade other than dupion yarn valued at Rs.6,77,376/- under the duty exemption scheme.

4. The petitioners operating under the aforesaid letter of authority placed an order to import goods, namely, raw silk and under terms of contract. They opened irrevocable letter of credit on 26th November, 1982.

5. It is not in dispute that the letter of authority under which the petitioners were operating was issued by M/s.Royal Fabrics, Bangalore after receipt of show cause notice dated 29th October, 1982 calling upon them to show cause why their licence should not be cancelled for the lapses committed by

them; the details of which were disclosed to them in the said show cause notice.

6. Be that as it may, after issuance of the show cause notice, the aforesaid licence also came to be suspended on 6th December, 1982. The goods, which were sought to be imported, were shown to have been shipped on 24th February, 1983, i.e. after the date of suspension of licence which, ultimately, came to be cancelled, following principles of natural justice, on 16th February, 1983 i.e. much before the arrival of the goods. The goods arrived at Bombay on 2nd March, 1983; by that time licence was already cancelled.

7. On receipt of the documents, Bill of Entry No.3184/227 was filed on 21st March, 1983 along with other documents. The Additional Collector, finding cancellation of licence before arrival of goods, by an order dated 16th August, 1983, confiscated the goods in question holding that the import was illegal and without authority of law. He, however, gave option to petitioner No.1 to pay fine in the sum of Rs.3,50,000/- in lieu of confiscations as per the said order which is incorporated at Exh.C.

8. Being aggrieved by the aforesaid order of Additional Collector, petitioners preferred appeal to Customs, Excise & Gold (Control) Tribunal (CEGAT), the respondent No.3 herein.

9. The CEGAT, after hearing the appeal, was pleased to confirm the order of the Additional Collector with small modification; whereby redemption fine was reduced from Rs.3,50,000/- to Rs.2,50,000/-. CEGAT held that the licence ought to have been valid at the time of shipment of goods. Since the licence had been cancelled on 16th February, 1983 i.e. before the goods were shipped, shipment date being 24th February, 1983, the import was not valid. Thus, it was held that at the time of shipment, there was no valid licence with the importer of goods.

10. The petitioners, thereafter, having suffered the aforesaid order, filed rectification application with a view to bring on record that the shipment was not on 24th February, 1983 but it was on 12th February, 1983, obviously, with a view to show that shipment was much before the date of cancellation of licence. The said application was duly heard by the Bench of CEGAT comprising of two

learned Members, namely, Shri K.S.Dilipsinhiji and Shri K.Gopal Hegde.

11. Learned two Members differed in their views. Shri K.Gopal Hegde by his judgment and order dated 2nd January, 1986 rejected the contention of the petitioners that there was a mistake apparent on record in disclosing the date of shipment; whereas Shri K.S.Dilipsinhinji by his order dated 9th January, 1986 allowed rectification application holding it to be an error apparent on the face of record. He, consequently, recalled the order of the CEGAT and set aside the order of the Additional Collector (Ex.C).

12. In view of the aforesaid difference of opinion between two Members, the matter was referred to the President of CEGAT under section 129(c)(5) for placing it before the third Member. Consequently, matter was placed before Shri S.D.Jha, Vice President of CEGAT as a third Member to resolve difference of opinion, who, by his judgment and order dated 30th June, 1986, concurred with the view taken by Shri Hegde and rejected the contentions of the petitioners. He proceeded on the footing that there was no material on record to show that the original

Bill of Lading was produced before the Customs Authorities showing the date of shipment of goods as 12th February, 1983.

13. Being aggrieved by the aforesaid two orders the petitioners have filed the present petition under Article 226 of the Constitution of India to challenge the aforesaid orders.

Submission and Consideration :

14. The sole contention advanced by learned counsel appearing for the petitioners is that the goods were shipped on 12th February, 1983 i.e. prior to 16th February, 1983, the date on which the licence was cancelled and, therefore, the import could not have been held to be bad and illegal, consequently, the order of confiscation could not have been passed.

15. The submission of the petitioners is misplaced. The undisputed facts, as already recorded hereinabove, are that, prior to the cancellation; the licence in question was suspended on 6th December, 1982. In that view of the matter, the licence was not operative. It was under suspension. It was, ultimately, cancelled on 16th February, 1983.

The order of suspension was merged in order of cancellation. Thus, the import in question could not be said to be legal and valid. Secondly, writ jurisdiction can be invoked for implementation of regime of law and not to abrogate it. If the shipment was during the period when the licence was under suspension, by no stretch of imagination, such import can be held to be valid. The import was illegal. No writ can be issued to make the import legal which was illegal. Thus, without going to the legal issue sought to be raised, petition can be decided on the fact admitted by the petitioners themselves. We are, thus, satisfied that the impugned orders and the action taken are legal and valid and no interference at the hands of this Court is called for.

16. In the result, petition is dismissed. Rule stands discharged with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**